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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/081,457	02/21/2002	Anne M. Pianca	98PI021US08	3029
7590 07/13/2004				
PACESETTER, INC. 15900 Valley View Court Sylmar, CA 91392-9221				
EXAMINER EVANISKO, GEORGE ROBERT				
ART UNIT		PAPER NUMBER		
3762				

DATE MAILED: 07/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

10/081,457

Applicant(s)

PIANCA ET AL.

Examiner

George R Evanisko

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/5/04 has been entered.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 13, "so as to bias" is vague since it sounds as if the electrode is biasing the lead to place the electrode on the vessel wall (the lead material/bends bias the lead). It is suggested to use "so that the at least one electrode is adapted to contact one of the sides..."

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this

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subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 4, 5, 6, 9, and 12 are rejected under 35 U.S.C. 102(e) as being anticipated by Hsu et al (6430449). For claim 4, Hsu et al will meet the intended use recitations presented in the claim since the stylet can be moved anywhere along the bends to cant the tip toward the patients wall (the "steerable canted end" is used in claim 2 when the stylet is partially withdrawn).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 11 is rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Hsu et al. Hsu shows in figure 5 the lead having non-helical bends comprising two-sides forming an angle in the range of about 45 degrees, which is in the range of 30-150 degrees.

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In the alternative, Hsu discloses the claimed invention except for the bends having an angle of 30-150 degrees. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the heart lead as taught by Hsu, with the bends having an angle of 30-150 degrees since it was known in the art that heart leads having an anchor use anchor bends having an angle of 30-150 degrees to allow the lead to easily anchor in the heart and provide good stability to prevent movement of the lead.

Claims 10 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hsu et al as applied to claims 6 and 1 above.

Hsu discloses the claimed invention except for the humps being in different geometric planes. It would have been an obvious matter of design choice to one skilled in the art to modify the anchoring lead as taught by Hsu with the humps in the anchor being located in different geometric planes, since applicant has not disclosed that providing the humps in different geometric planes provides any criticality and/or unexpected results and it appears that the invention would perform equally well with any location of the humps, such as the humps being located in the same plane as taught by Hsu to anchor the lead in the coronary sinus and provide contact with the wall only along the humps.

Claims 3, 7, 8, and 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hsu as applied to claims 2, 6, and 1 above. For claim 8, Hsu states that the bends are located 8-11 mm from each other.

Hsu discloses the claimed invention except for the lead having a distal opening to receive a guidewire, the stylet having a tapered portion, the first bend located in the range of 0.15-0.7 inches from the distal end, and the lead having a textured region of ePTFE or porous material. It

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would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the medical electrical lead as taught by Hsu with the lead having a distal opening to receive a guidewire, the stylet having a tapered portion, and the lead having a textured region of ePTFE or porous material (such as silicone rubber, polyurethane, or ceramic) since it was known in the art that medical electrical leads have a distal opening to receive a guidewire to allow the lead to be positioned in the body, that leads use a stylet with a tapered portion to allow the stylet to fit in the narrow distal end of the lead and to position the lead, and that leads have a textured region of ePTFE or porous material to allow the lead to anchor in the body.

In addition, it would have been an obvious matter of design choice to one skilled in the art to modify the medical electrical lead as taught by Hsu to include ePTFE as the textured region and the first bend being located 0.15-0.7 inches from the distal end, since applicant has not disclosed that ePTFE and the first bend being located 0.15-0.7 inches from the distal end provides any criticality and/or unexpected results and it appears that the invention would perform equally well with any biocompatible textured material or any location of the bends, such as silicone rubber, polyurethane or ceramic for allowing the lead to anchor in the body as taught by Hsu in view of one having ordinary skill in the art for allowing the lead to anchor in the coronary sinus or such as the S-shaped or zig-zag shaped lead location of the bends as taught by Hsu to allow the lead to anchor in the coronary sinus and provide electrodes for electrical contact with the heart chambers.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection necessitated by amendment.


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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George R Evanisko whose telephone number is 703 308-2612. The examiner can normally be reached on M-F 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on 703 308-5181. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


George R Evanisko
Primary Examiner
Art Unit 3762

8/7/12/4

GRE
July 12, 2004